



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND AND FOUR

AN ACT TO CLARIFY CERTAIN TAX PROVISIONS AND IMPROVE VARIOUS ACTIVITIES OF THE DEPARTMENT OF REVENUE

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. Chapter 10 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking section 28A and inserting in place thereof the following section:-

Section 28A. Prior to disbursement of a prize in excess of \$600, the commission shall review information furnished by the IV-D agency and by the department of revenue, as set forth in chapter 119A and herein to ascertain whether the holder of a winning ticket owes past due child support to the commonwealth or to an individual to whom the IV-D agency is providing services, and to ascertain whether the holder of a winning ticket owes any past-due tax liability to the commonwealth. If the holder owes past-due child support, or owes any past-due tax liability, the commission shall notify the IV-D agency or the Commonwealth, respectively, of the holder's name, address and social security number. Subsequent to statutory state and federal tax withholding, the commission shall first disburse to the IV-D agency the full amount of the prize or such portion of the prize that satisfies the holder's past-due child support obligation and, if

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funds remain available after said disbursement, shall disburse to the department of revenue the full amount of the prize or such portion of the prize that satisfies the holder's past-due tax liability. The commission shall disburse to the holder only that portion of the prize, if any, remaining after the holder's past-due child support obligation and the holder's past-due tax liability have been satisfied.

SECTION 2. Section 10C of chapter 58 of the General Laws, as so appearing, is hereby amended in the first paragraph by striking the fourth sentence.

SECTION 3. Said section 10C of said chapter 58, as so appearing, is hereby further amended by striking the second paragraph.

SECTION 4. Section 13 of said chapter 58, as amended by section 187 of chapter 26 of the acts of 2003, is hereby further amended in the first sentence by striking the words "nineteen hundred and seventy-five and every fifth" and inserting in place thereof the following:- 2005 and every fourth.

SECTION 5. Said chapter 58, as appearing in the 2002 Official Edition, is hereby amended by striking section 14 and inserting in place thereof the following section:-

Section 14. The commissioner, not later than June 1 of each year in which he makes such a determination, shall notify the assessors of each city or town where the commonwealth owns, or the county commissioners hold, land for the purposes stated herein, of his determination of the value of such land in such city or town. He shall hold a public hearing on such valuations on or before June 10 next following and shall include notice thereof in such notification of his determination to the assessors. The commissioner may, on the basis of any new information furnished to him at such hearing or otherwise, change the valuation of any such land in any city or town. Notice of any change shall be sent to the assessors of such city or town on or before

July 20 next following. A board of assessors aggrieved by a determination of the value of any land as valued under sections 13 or 15 may make a written application for a correction thereof to the appellate tax board on or before August 10 next following, setting forth the grounds for correction. Not later than January 20 of the year next following the year in which it is filed, said board shall, upon the basis of such application or after giving such assessors a hearing, as the board may determine, make a finding whether the commissioner acted in accordance with section 13. If the board finds that the commissioner failed so to act, it shall thereupon make a determination of value in accordance with section 13 and shall notify said board of assessors and the commissioner of its determination, and its decision shall be conclusive.

With respect to the determination of the value of land held by the division of watershed management of the department of conservation and recreation for the purposes named in section 5G of chapter 59, the commissioner shall send any notice of such valuations required by this section to be sent to the assessors of each city or town where such land is held to said division, and said division may, if aggrieved by a determination of the value of any such land, also apply for a correction to the appellate tax board. Any application by the assessors and division for correction of the valuation of land held for the purposes named in section 5G shall be made and acted upon in the manner provided by this section, except that every application shall name as appellees the commissioner of revenue and all parties, other than the appellant, to whom notice of valuation was required to be sent, and any notices issued by the appellate tax board shall be sent to the appellant and all named appellees.

SECTION 6. Section 15 of said chapter 58, as so appearing, is hereby amended by striking the words "four succeeding years" and inserting in place thereof the following:- three succeeding years.

SECTION 7. Section 41 of chapter 59 of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following new paragraph:-

Such return and other related documents filed with the commissioner, shall, except in proceedings before the appellate tax board, a court of the commonwealth or other administrative agency, tribunal or court of competent jurisdiction, be open only to the inspection of the assessors and the commissioner, the deputies, clerks and assistants of either the assessors or the commissioner and such other officials or designated public or private auditors or independent contractors of the commonwealth or of its political subdivisions as may have occasion to inspect such return and other related documents filed with the commissioner in the performance of their official, contractual or designated duties; provided, however, that such portion of the return and other related documents filed with the commissioner consisting of listings of particular property, including but not limited to categories, descriptions and original cost thereof, located in any particular city or town shall not be open to the inspection of the assessors, deputies, clerks, assistants, such other officials, independent contractors or public or private auditors of any other city or town, unless the appellate tax board, court of the commonwealth or other agency, tribunal or court of competent jurisdiction authorizes such inspection.

SECTION 8. Section 2 of chapter 60A of the General Laws, as so appearing, is hereby amended by striking the tenth sentence, in lines 45 through 53, and inserting in place thereof the following sentence:- The owner, if aggrieved by the excise assessed, may at any time within three years from the date the excise was due, or one year from the date the excise was paid, whichever is later, apply for an abatement to the board of assessors, and from a decision of the board of assessors upon such application, an appeal may be taken to the county commissioners or to the appellate tax board, all in accordance with section 64 or section 65 of chapter 59.

SECTION 9. Said chapter 60A, as so appearing, is hereby amended by inserting at the end thereof the following new section:-

Section 8. Notwithstanding the failure of the owner of the motor vehicle on which the excise was assessed under this chapter to apply for an abatement within the time set forth in section 2, the board of assessors may abate the whole, or any part of any such excise, or any interest thereon or costs relative thereto, that remains unpaid where in the assessors' opinion it should be abated; provided, no such abatements shall be granted unless in accordance with such rules, regulations and guidelines as the commissioner of revenue may prescribe; and provided, further, no interest shall be due in connection with any such abatement. Whenever an abatement is granted under this section, the assessors shall enter the same in their record of abatements. The assessors shall annually, not later than August 1, report to the commissioner, in the form and manner prescribed by him, the abatements so granted during the prior fiscal year.

SECTION 10. Paragraph (a) of section 8 of chapter 62 of the General Laws, as so appearing, is hereby amended by striking the second paragraph, in lines 5 through 15, and inserting in place thereof the following paragraph:-

The Massachusetts adjusted gross income of such corporate trust shall be redetermined as if it were a resident natural person; provided, however, that for purposes of any determination involving sections 311, 312, 332 through 338, or 346 through 368 of the Code, any corporate trust shall be treated as a corporation. No deductions or exemptions allowable under sections 3A, 3B or 3C of this chapter shall be allowed to a corporate trust. The taxable income of each Part shall be the Massachusetts adjusted gross income of such Part allocated or apportioned to Massachusetts in accordance with section 38 of chapter 63.

SECTION 11. Said section 8 of said chapter 62, as amended by section 8 of chapter 4 of the acts of 2003, is hereby further amended by striking out paragraph (b) and inserting in place thereof the following paragraph:-

(b) Paragraph (a) shall not apply to a corporate trust which: (i) is a regulated investment company under section 851 of the Code or a real estate investment trust under section 856 of the Code; (ii) is exempt under subdivision (1) or (2) of section 23 of chapter 32; or (iii) has made a valid election for the taxable year to be treated as a real estate mortgage investment conduit, as defined in section 860D of the Code for federal income tax purposes.

SECTION 12. Section 17 of said chapter 62, as amended by section 9 of chapter 4 of the acts of 2003, is hereby further amended in paragraph (b) by striking the first sentence and inserting in place thereof the following sentence:- A nonresident of the commonwealth who is a member of a partnership that is engaged in the conduct of a trade or business in the commonwealth, except a nonresident limited partner of a limited partnership engaged exclusively in buying, selling, dealing in or holding securities on its own behalf and not as a broker, shall be subject to the taxes imposed by this chapter on his distributive share of the income received or earned by the partnership from sources taxable under this chapter.

SECTION 13. Section 63 of said chapter 62, as appearing in the 2002 Official Edition, is hereby amended by striking paragraph (a) and inserting in place thereof the following paragraph:-

(a) For purposes of this section, the term "installment transaction" means any transaction which:

(1) is treated for federal income tax purposes under section 453 of the Code, and

(2) would, but for the application of section 453 of the Code, result in an item of Massachusetts gross income for the taxable year of the transaction that is equal to or greater than \$1,000,000.

SECTION 14. Paragraph (d) said section 63 of said chapter 62, as so appearing, is hereby further amended by striking the third sentence and inserting in place thereof the following sentence:- The person making the election shall deposit with the commissioner security, in a form satisfactory to the commissioner, in an amount equal to such excess for the payment of future taxes under this chapter.

SECTION 15. Section 2 of chapter 62B of the General Laws, as so appearing, is hereby amended by inserting the following paragraph after the fourth paragraph:-

The commissioner may, if he deems such action necessary for the protection of the revenue of the commonwealth, require persons other than employers (1) to deduct and withhold taxes from payments made by such persons to residents, nonresidents and part-year residents of the commonwealth, (2) to file a withholding return as prescribed by the commissioner, and (3) to pay over to the commissioner, or to a depository designated by the commissioner, the taxes so required to be deducted and withheld.

SECTION 16. Said section 2 of said chapter 62B, as so appearing, is hereby further amended in the sixth paragraph by inserting at the end of the first sentence, in line 49, the following:- except that such withholding for purposes of this chapter shall apply to payments of winnings of \$1,000 or greater irrespective of any contrary provision of the Internal Revenue Code, as amended from time to time.

SECTION 17. Section 13 of said chapter 62B, as so appearing, is hereby amended by striking out the words "two hundred dollars," in lines 4 and 5, and inserting in place thereof the following:- \$400.

SECTION 18. Clause (i) of subsection (d) of section 14 of said chapter 62B, as so appearing, is hereby amended by striking the figure "\$200", in lines 44 and 46, and inserting in place thereof the following:- \$400.

SECTION 19. Chapter 62C of the General Laws, as so appearing, is hereby amended by striking section 35 and inserting in place thereof the following section:-

Section 35. If any check or electronic funds transfer in payment of any tax, interest, penalty, fee or other charge is not duly paid there shall, in addition to any other penalties provided by law, be paid as a penalty by the person who tendered such check or electronic funds transfer, upon notice and demand by the commissioner, in the same manner as the tax or other amount to which the check or electronic funds transfer relates, an amount equal to 2 per cent of the amount of such check or electronic funds transfer, provided that if the amount of such check or transfer is less than \$1,500, the penalty under this section shall be \$30 or the amount of such payment, whichever is the lesser. This section shall not apply if the person tendered such check or authorized such electronic funds transfer in good faith and with reasonable cause to believe that it would be duly paid. The commissioner may, in his discretion, abate any such penalty in whole or in part.

SECTION 20. Section 47A of said chapter 62C, as so appearing, is hereby amended by striking subsection (d) and inserting in place thereof the following subsections:-

(d) if the commissioner determines from the information furnished pursuant to paragraphs (a), (b) or (c), or otherwise, that any person who holds a license or certificate of

authority issued by any such agency or who has agreed to furnish goods, services or real estate space to any such agency has neglected or refused to file any returns or to pay any tax required under this chapter or has been penalized pursuant to section 9 of chapter 62E for failure to comply with the provisions under said chapter 62E relating to reporting of employees and contractors, or has been penalized pursuant to paragraph (3) of subsection (f) of section 12 of chapter 119A for failure to comply with the provisions under said chapter 119A relating to withholding and remitting child support, the commissioner, upon compliance with the provisions of subsection (e) hereof, shall issue a notice of delinquency to such agency and such person in writing, provided, however, that no such notice shall be sent, and the procedure set forth in subsection (e) hereof shall not be initiated, if such person has filed in good faith an application for abatement of such tax or a petition before the appellate tax board contesting such tax and the application or petition, or an appeal from an adverse decision of the appellate tax board, is still pending, or if the statute of limitations for filing an application for abatement, petition or appeal has not yet expired. Upon the receipt of any such notice of delinquency, such agency, if a department, board, commission, division, authority, district or other agency of the commonwealth, shall immediately revoke or suspend such license, certificate of registration, or certificate of authority. Any license, certificate of registration or certificate of authority suspended or revoked under this section shall not be reissued or renewed until the agency receives a written authorization to do so from the commissioner pursuant to subsection (f) of this section.

(e) Prior to the issuance of the notice of delinquency described in subsection (d), the commissioner shall send a written notice to such person of his initial determination that such person has neglected or refused to file any returns or to pay any tax required under this chapter,

or has been penalized pursuant to section 9 of chapter 62E for failure to comply with the provisions under said chapter 62E relating to reporting of employees and contractors, or has been penalized pursuant to paragraph (3) of subsection (f) of section 12 of chapter 119A for failure to comply with the provisions under said chapter 119A relating to withholding and remitting child support. The notice of initial determination shall inform the person that he has 30 days from the date of the notice to request a hearing before the commissioner with respect to the determination. If the person does not request a hearing within the 30 day period, the commissioner may issue the notice of delinquency described in subsection (d). The commissioner may likewise issue the notice of delinquency if, at the hearing , the person fails to establish:

(1) In the case of alleged neglect or refusal to file any returns or pay any tax and related interest and penalties required under chapter 62C, that (a) said returns have been filed, and (b) said taxes and related interest and penalties have been paid.

(2) In the case of alleged imposition of a penalty for failure to comply with the requirements of chapter 62E relating to reporting of employees and contractors, that (a) the person has complied with all reporting requirements under said chapter 62E, or (b) that no penalty has been assessed against him under said chapter.

(3) In the case of alleged failure to comply with the provisions of chapter 119A relating to withholding and remitting child support, that (a) said child support payments have been remitted, (b) the order of income withholding has been complied with, or (c) he has not been penalized for failure to obey said order.

If, after hearing, the commissioner finds that the person has neglected to file returns or pay taxes and related interest and penalties, has been penalized for failure to comply with the provisions relating to withholding and remitting child support, or has been penalized for failure

to comply with the provisions relating to the reporting of employees and contractors, and that the person has failed to establish any of the defenses provided herein or any other defense that the commissioner deems adequate in the circumstances, the commissioner shall issue a notice of delinquency and shall notify the licensing authority to suspend, revoke or prohibit issuance or renewal of the person's license.

(f) If a person whose license has been suspended, revoked or prohibited from being issued or renewed thereafter files the requested returns and fully pays all underlying taxes, interest and penalties, or withholds and remits all child support payments due, or reports and fully discloses all wages to employees and contractors, or complies with any payment plan entered into with the commissioner, any of which were the basis for the notice of delinquency, the commissioner shall notify the licensing authority that it should promptly reinstate, issue or renew the license of the person if he is otherwise entitled thereto.

SECTION 21. Subsection (a) of section 50 of said chapter 62C, as so appearing, is hereby amended by striking the last sentence.

SECTION 22. Said section 50 of said chapter 62C, as so appearing, is hereby amended by striking subsection (b) and inserting in place thereof the following subsection:-

(b) The lien imposed by this section shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor until notice thereof has been recorded by the commissioner in the lien registry maintained by the department pursuant to section 50A. This filing shall operate to perfect a lien as to any interest in real property the person owns within the commonwealth at the time of recording, regardless of the county where the real or personal property may be located. If the person subsequently acquires an interest in real property, the lien shall be perfected upon filing with the secretary of the commonwealth or upon the recording or registering of the

instrument by which such interest is obtained in the registry of deeds or registry district in the county or registry district where the real property is located, as the case may be. A lien shall be perfected as to real property when the notice thereof is filed pursuant to this section and section 50A of this chapter and a deed or other instrument in the name of the person is on file in the registry of deeds or registry district for the county or registry district where the person owns property without respect to whether the lien or the deed or other instrument was recorded or registered first.

SECTION 23. Said chapter 62C, as so appearing, is hereby amended after section 50 by inserting the following new section:-

Section 50A. (a) The department shall establish and maintain a registry of liens to secure tax and child support debts, and shall record liens in such registry pursuant to section 50 of this chapter and section 6 of chapter 119A. With respect to real property, the time of recording of a lien shall be deemed to be 8:00 p.m. on the date that the lien is recorded in the registry.

(b) The registry shall be maintained on a web site or by another electronic method and format prescribed by the commissioner of revenue. The department shall also make access to the registry available in each registry of deeds in the commonwealth.

(c) An individual may examine information in the registry in order to determine the existence of a tax or child support lien against real or personal property owned by a specific individual. Information provided by the department under this section may only be used for the purpose of assisting the department in collecting a tax or child support debt. Any individual who uses such information for any other purpose shall be liable in a civil action to the department in the amount of \$1,000 for each violation.

SECTION 24. Subsection (a) of section 53 of said chapter 62C, as so appearing, is hereby amended in the first sentence by inserting at the end thereof the following:- including, without limitation, any periodic or lump sum payments from any state or local agency or authority, including unemployment compensation and other benefits not otherwise exempt, judgments, settlements, and lottery winnings.

SECTION 25. Section 65 of said chapter 62C, as so appearing, is hereby amended in the first paragraph by striking the first sentence and inserting in place thereof the following sentence:- Taxes shall be collected: (i) within six years after the assessment of the tax, (ii) within any further period after such six year period during which the taxes remain unpaid but only against any real or personal property of the taxpayer to which a tax lien has attached and for which a notice of lien has been filed or recorded under section fifty hereof in favor of the commonwealth in accordance with applicable state or federal law within six years after the assessment of the tax, (iii) prior to the expiration of any period of collection agreed upon in writing by the commissioner and the taxpayer before the expiration of such six year period or, (iv) if there is a release of levy under section sixty-four after such six year period, then before such release.

SECTION 26. Section 2 of chapter 62E of the General Laws, as so appearing, is hereby amended in the first sentence by striking the words:- and consistent with federal requirements or limitations.

SECTION 27. Said section 2 of said chapter 62E, as so appearing, is hereby further amended by striking the last sentence and inserting the following sentence:- The commissioner may require an employer, including a governmental entity or a labor organization, or a payor of

income to submit such information on magnetic media or in other machine readable form in accordance with specifications provided by said commissioner.

SECTION 28. Subsection (a) of section 2A of said chapter 63, as so appearing, is hereby amended by inserting at the end thereof the following sentence:- Notwithstanding any other provision of this section, the portion of the net income of a financial institution that a non-domiciliary state is prohibited from taxing under the Constitution of the United States shall be allocated in full to the commonwealth if the commercial domicile of the institution is in the commonwealth.

SECTION 29. Subsection (8) of section 30 of said chapter 63, as so appearing, is hereby amended in the first sentence by inserting after the words "section thirty-two" the following words:- or of a foreign corporation taxable under clause (1) of subsection (a) of section 39.

SECTION 30. Subsection (8) of said section 30 of said chapter 63, as so appearing, is hereby further amended, in line 151 through line 152, by striking the words "organized in the commonwealth".

SECTION 31. Subsection (9) of said section 30 of said chapter 63, as so appearing, is hereby repealed.

SECTION 32. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking subsection (10) and inserting in place thereof the following subsection:-

10. "Tangible property corporation", a corporation whose tangible property situated in the commonwealth on the last day of the taxable year and not subject to local taxation is 10 per cent or more of such portion of its total assets on the last day of the taxable year less those assets as are situated in the commonwealth on the last day of the taxable year and are subject to local taxation, less its investment on said date in subsidiary corporations which represent 80 per cent

or more of the voting stock of said corporations, as shall be found by multiplying said amount by such corporation's income apportionment percentage, as determined under the provisions of section 38, or a corporation which, in the judgment of the commissioner, should be so classified. For the purpose of this paragraph, the assets of the corporation shall be valued at their book value.

SECTION 33. Said section 30 of said chapter 63, as so appearing, is hereby further amended by striking subsection (11) and inserting in place thereof the following subsection:-

11. "Intangible property corporation", a corporation whose tangible property situated in the commonwealth on the last day of the taxable year and not subject to local taxation is less than 10 per cent of such portion of its total assets on the last day of the taxable year less those assets as are situated in the commonwealth on the last day of the taxable year and are subject to local taxation, less its investment on said date in subsidiary corporations which represent 80 per cent or more of the voting stock of said corporations, as shall be found by multiplying said amount by such corporation's income apportionment percentage, as determined under the provisions of section 38, or a corporation which, in the judgment of the commissioner, should be so classified. For the purpose of this paragraph, the assets of the corporation shall be valued at their book value.

SECTION 34. Section 32B of said chapter 63, as so appearing, is hereby amended in the first paragraph by inserting at the end thereof the following sentence:- The commissioner may require corporations that have made such election to report the income measure and the non-income measure of the excise, and the minimum excise if applicable, all as set forth in sections 32 and 39 of this chapter, on a single form; provided, however, that nothing in this section shall be interpreted as eliminating the requirement that each corporation participating in a combined

return compute its non-income measure and the minimum excise if applicable in accordance with section 32 or 39 of this chapter.

SECTION 35. Subsection (b) of section 38 of said chapter 63, as so appearing, is hereby amended by inserting at the end thereof of the following sentence:- Notwithstanding any other provision of this section or of section 52A, the portion of the taxable net income of a corporation that a non-domiciliary state is prohibited from taxing under the Constitution of the United States shall be allocated in full to the commonwealth if the commercial domicile of the corporation is in the commonwealth.

SECTION 36. Subsection (f) of said section 38 of said chapter 63, as so appearing, is hereby further amended by striking the third paragraph and inserting in place thereof the following paragraph:-

For the purposes of this subsection, (1) in the case of the licensing of intangible property, the income-producing activity will be deemed to be performed in this commonwealth to the extent that the intangible property is used in this commonwealth; (2) the corporation will be deemed to be taxable in the state of the purchaser if the tangible personal property is delivered or shipped to a purchaser in a foreign country; and (3) sales of tangible personal property to the United States Government or any agency or instrumentality thereof for purposes of resale to a foreign government or any agency or instrumentality thereof are not sales made in this commonwealth.

SECTION 37. Section 38 of said chapter 63, as so appearing, is hereby amended after paragraph (m) by inserting the following new paragraph:-

(n) In any case in which a purchasing corporation makes an election under Section 338 of the Code, the target corporation will be treated as having sold its assets for purposes of this section.

SECTION 38. Section 38B of said chapter 63, as so appearing, is hereby amended by adding after subsection (b) thereof the following subsection:-

(c) For purposes of paragraph (a) of this section, "securities" means (1) equity or debt instruments and options, futures and other derivatives, that are traded on a public exchange or in the secondary market and that are not issued by an affiliate, (2) cash and cash equivalents, including savings and checking accounts and certificates of deposit, and foreign currencies, (3) interests in a real estate investment trust under section 856 of the Code or a regulated investment company under section 851 of the Code, or a real estate mortgage investment conduit under section 860D of the Code, so long as none of the mortgages owned by the conduit were originated by the holder thereof or by an affiliate of the holder, and (4) any other passive investment vehicles that, in the judgment of the commissioner, should be considered to constitute "securities" for purposes of paragraph (a); "affiliate" means a member of an affiliated group as defined under section 1504 of the Code, and "debt instruments" shall be deemed to include, but not be limited to, (1) debt obligations of the United States, its agencies or instrumentalities and of any state or political subdivision thereof, their agencies or instrumentalities, and (2) mortgage-backed securities that are guaranteed by the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Bank or the Federal Home Loan Mortgage Corporation and collateralized mortgage obligations, so long as none of the mortgages that underlie the obligation or by which the securities are backed were originated by the holder thereof or by an affiliate of the holder. Nothing in this paragraph shall be construed as

limiting the instruments that may be held by an investment partnership for purposes of the safe harbor set forth in paragraph (b) of section 17 of chapter 62.

SECTION 39. Section 38B of said chapter 63 of the General Laws is hereby further amended by redesignating existing subsections (c) and (d) as subsections (d) and (e), respectively.

SECTION 40. Said chapter 63, as so appearing, is hereby amended by striking section 42A and inserting in place thereof the following section:-

Section 42A. The taxable net income of a foreign corporation allocated or apportioned to this commonwealth under the provisions of section 38 shall be its net income subject to the tax under this chapter.

SECTION 41. Subsection (c) of section 3 of chapter 63B of the General Laws, as so appearing, is hereby amended by striking clause (iii) and inserting in place thereof the following clauses:-

(iii) 90 per cent of the tax for the taxable year, or

(iv) 90 per cent of the tax that would be required to be shown on the return for the taxable year if such tax were determined by using the income apportionment percentage determined for the preceding taxable year under the applicable provisions of chapter 63.

SECTION 42. Section 7B of chapter 64C of the General Laws, as so appearing, is hereby amended by inserting at the beginning of subsection (b) the following:-

No person shall sell cigars, nor any other tobacco product which is not subject to the provisions of sections 29 to 39 of this chapter, nor act as a manufacturer, wholesaler, vending machine operator, transportation company, unclassified acquirer, or retailer of said products in the commonwealth unless licensed to do so by the commissioner. The commissioner shall have

the authority to grant licenses for manufacturers, wholesalers, retailers, vending machine operators, transportation companies or unclassified acquirers upon the same conditions and upon the payment of a fee in the same amount as he is then authorized by regulation to charge for the issuance of a corresponding license to a cigarette licensee under sections 1 and 2 hereof. The excise imposed by this section shall be collected by licensed wholesalers who shall purchase cigars and other tobacco products solely from licensed manufacturers and shall sell such products only to those persons licensed to sell such products at retail.

SECTION 43. Section 1 of chapter 64G of the General Laws, as so appearing, is hereby amended by inserting at the end thereof the following new subsection:-

(k) "Room Reseller", any person or legal entity having any option, right, permission, license, or other authority from or through any operator to reserve, let, and/or sell any room or rooms under the management, control, possession or ownership of any operator in any bed and breakfast establishment, bed and breakfast home, hotel, lodging house or motel such that the occupancy or a reservation for such occupancy is arranged with the occupant, in whole or in part, by and through the efforts of said person or legal entity, whether or not final approval of such occupancy is left to the further decision, discretion or action of the operator.

SECTION 44. Said chapter 64G, as so appearing, is hereby further amended by inserting the following section:-

Section 4A. (a) In any instance in which the transfer of occupancy of any room or rooms under the management, control, possession or ownership of any operator occurs, in whole or in part, as the result of any activity or arrangement by any room reseller, the amount of rent upon which the excise shall be calculated shall be the full amount of all considerations charged to and paid by the occupant to each of the room reseller and/or the operator for the occupancy valued in

money or otherwise as defined as rent in subsection 1(j) hereof. Any such room occupancy transactions as herein described shall be treated as a transfer by the operator of such room or rooms such that the full consideration paid by the occupant for the occupancy shall be the amount of rent upon which the excise shall be calculated, charged, collected, reported and remitted by the operator to the commissioner.

(b) In any such room occupancy transactions as described in subsection (a) hereof, the room reseller shall be deemed not to be the occupant of the room regardless of the circumstances by which the operator has transferred the right to let and transfer the room to the room reseller. Rather, the occupant shall be the person that actually occupies the room. In any such room occupancy transactions as described in subsection (a) hereof, the operator shall be deemed to be the recipient of the total amount of all the consideration paid by the occupant either to the room reseller and/or to the operator for the occupancy, as the case may be. The operator shall obtain from the room reseller and/or from the occupant such information as will permit it to timely and accurately calculate, charge and collect the full and correct amount of the excise directly from the occupant and to timely and accurately report and remit said excise to the commissioner in accordance with all applicable provisions of this chapter. No room reseller which is not licensed as an operator under this chapter shall collect, nor hold itself out as a collector of, the excise imposed under this chapter.

SECTION 45. Section 1 of chapter 64H of the General Laws, as so appearing, is hereby amended in the definition of "Sale at retail" by striking the second sentence and inserting in place thereof the following sentence:- When tangible personal property is physically delivered by an owner, any former owner thereof, a factor, or any agent or representative of said owner, former owner or factor, to the ultimate purchaser residing in or doing business in the commonwealth, or

to any person for redelivery to said purchaser, pursuant to a retail sale made by a vendor not engaged in business in the commonwealth, the person making or effectuating the delivery shall be deemed the vendor of that property, the transaction shall be a retail sale in the commonwealth by such person and that person, if engaged in business in the commonwealth, shall include the retail selling price in its gross receipts, regardless of any contrary statutory or contractual terms concerning the passage of title or risk of loss which may be expressly or impliedly applicable to any contract or other agreement or arrangement for the sale, transportation, shipment or delivery of that property.

SECTION 46. Section 6 of said chapter 64H, as so appearing, is hereby amended in paragraph (e) by striking the second and third sentences.

SECTION 47. Said section 6 of said chapter 64H, as so appearing, is hereby further amended by striking subsection (ff) and inserting in place thereof the following subsection:-

(ff) Sales of printed material which is manufactured in the commonwealth to the special order of a purchaser, to the extent such material is delivered to an interstate carrier, a mailing house or a United States Post Office for delivery or mailing to a purchaser located outside the commonwealth or a purchasers designee located outside the commonwealth, including sales of direct and cooperative direct mail promotional advertising materials which are manufactured both inside and outside the commonwealth and which are distributed to residents of the commonwealth from locations both inside and outside the commonwealth. For the purpose of this paragraph, "direct and cooperative direct mail promotional advertising materials" shall mean individual discount coupons, or advertising leaflets incorporating such coupons within the promotional advertising materials no greater than six pages in total length, and including any accompanying envelopes and labels. In order to be exempt hereunder, such promotional

advertising materials will be distributed as a part of a package of materials promoting one or more than one business, each operated at separate and distinct locations, and directed in a single package to potential customers, at no charge to the potential customer, of the businesses paying for the delivery of such material. For the purpose of this paragraph, "direct and cooperative direct mail promotional advertising materials" shall not include mail order catalogs, department store catalogs, telephone directories, or similar printed advertising books, booklets or circulars greater than six pages in total length.

SECTION 48. Section 2 of chapter 64I of the General Laws, as so appearing, is hereby amended by inserting after the word "vendor" the following:- or manufactured, fabricated or assembled from materials acquired either within or outside the commonwealth.

SECTION 49. Said chapter 64I, as so appearing, is hereby amended by inserting after section 4 the follow section:-

Section 4A. (a) Any individual taxpayer subject to the excise under this chapter who has not paid over the excise due for a purchase of tangible personal property as provided for under chapter 64H shall pay and account for that liability to the commissioner annually either by entering the amount of his liability upon the appropriate line item of the taxpayer's personal income tax return or by filing a separate use tax return in the form prescribed by the commissioner. If said taxpayer elects to report the use tax liability on his personal income tax return, irrespective of the filing status chosen, taxpayer shall enter either: (i) the estimated liability as provided in subsection (b) hereof based upon the taxpayer's Massachusetts adjusted gross income as determined under section 2 of chapter 62 of the General Laws or (ii) the exact amount of the liability based upon actual taxable purchases for the calendar year. Taxpayers opting to pay an estimated use tax liability for any period in accordance with the table and

provisions of subsection (b) hereof shall not be subject to any additional assessment of use tax for the period even if the taxpayer's estimated liability is lower than the actual liability. A taxpayer having no use tax liability for a tax period may enter a zero on the appropriate line of his personal income tax return.

(b) A taxpayer electing to satisfy a use tax liability by estimating same shall calculate the liability in accordance with the following table and provisions. The estimated liability shall only be applicable to purchases of any individual items each having a total sales price of less than \$1,000. For each taxable item purchased at a sales price of \$1,000 or greater, the actual use tax liability for each such purchase shall be added to the amount of the estimated liability derived from the below table.

MA AGI Per Return	Use Tax Liability
\$0 - \$ 25,000	\$ 0.00
\$25,001 - \$ 40,000	\$15.00
\$40,001 - \$ 60,000	\$25.00
\$60,001 - \$ 80,000	\$35.00
\$80,001 - \$100,000	\$45.00
Above \$100,000	(Multiply MA AGI by .0005)

SECTION 50. Subsection (c) of section 2 of chapter 119A of the General Laws, as amended by section 364 of chapter 26 of the acts of 2003, is hereby further amended by striking the words "but the penalties or fees may only be expended subject to appropriation. Upon collection, interest shall be distributed to the obligee" and inserting in place thereof the following:- provided that such penalty or fee shall be placed in the child support trust fund

established pursuant to section 9 of this chapter. Upon collection, interest shall be distributed to the individual obligee on whose behalf the collection was made.

SECTION 51. Paragraph (3) of subsection (b) of section 6 of said chapter 119A, as appearing in the 2002 Official Edition, is hereby amended by striking the paragraph and inserting the following paragraph:-

(3) The IV-D agency shall file notice of a lien, with the name of the obligor and other identifying information noted thereon, in the lien registry maintained by the department of revenue pursuant to section 50A of chapter 62C. This filing shall operate to perfect a lien as to any interest in real or personal property the obligor owns within the commonwealth at the time of filing, regardless of the county where the real or personal property may be located. If the obligor subsequently acquires an interest in real property, the lien shall be perfected upon the recording or registering of the instrument by which such interest is obtained in the registry of deeds or registry district in the county or registry district where the real property is located. A child support lien shall be perfected as to real property when the notice thereof is filed pursuant to this section and section 50A of chapter 62C and a deed or other instrument in the name of the obligor is on file in the registry of deeds or registry district for the county or registry district where the obligor owns property without respect to whether the lien or the deed or other instrument was recorded or registered first.

SECTION 52. Section 9 of said chapter 119A, as so appearing, is hereby amended in the first sentence of the second paragraph by inserting after the word "services" the following words:- , all penalties assessed and collected by the IV-D agency.

SECTION 53. Said section 9 of said chapter 119A, as so appearing, is hereby further amended by inserting at the end of the first sentence in the third paragraph the following words:-

; provided, however, that federal incentive payments shall be expended only as authorized by Title IV, Part D of the Social Security Act.

SECTION 54. Section 10 of said chapter 119A, as so appearing, is hereby amended in the second sentence by striking the word "two" and inserting in place thereof the following:- three.

SECTION 55. Subsection (2) of said section 10 of said chapter 119A, as so appearing, is hereby further amended by inserting at the end of the first sentence the following words:- attributed to federal incentive payments.

SECTION 56. Said section 10 of said chapter 119A, as so appearing, is hereby further amended by inserting at the end thereof the following paragraph:-

(3) A child support penalties account to be expended, without appropriation, pursuant to paragraphs (b) and (c) of section 10A of this chapter. To this account shall be credited all penalties collected by the IV-D agency, all amounts designated for this account pursuant to paragraph (a) of section 10A of this chapter, all interest collected by the IV-D agency on the state share of arrears assigned to the commonwealth pursuant to Title IV, Parts A and E, and Title XIX of the Social Security Act, and all interest and earnings of the fund, except as provided in paragraph (2) of this section.

SECTION 57. Said chapter 119A, as so appearing, is hereby further amended by inserting after section 10 the following section:-

Section 10A. (a) If a case receiving IV-D services is otherwise eligible for case closure and the commissioner of revenue determines that (1) an obligor has made an overpayment of ten dollars or less of the amount of any child support owed by such obligor, or (2) child support in the amount of ten dollars or less is due to an individual obligee, the commissioner shall disburse

such amounts to such obligor or obligee. If such obligor or obligee fails to negotiate the check issued by the commonwealth within 180 days of its issuance, such funds shall be placed in the account established pursuant to paragraph (3) of section 10 of this chapter, to be expended as provided in paragraphs (b) and (c) of this section.

(b) If the commissioner determines that the IV-D agency has distributed a payment to an individual obligee that was not a child support collection on behalf of such obligee, or that such obligee was otherwise not entitled to such payment, the IV-D agency shall make diligent efforts to recover such payment from such obligee, including deducting such amount, or a portion thereof, from future collections of child support made on behalf of such obligee. Any such recovered amounts shall be placed in the account established pursuant to paragraph (1) of section 10 of this chapter. Where the IV-D agency does not recover such payment, the IV-D agency may issue a refund of an overpayment to an obligor, or a replacement payment to an individual obligee on whose behalf the child support collection was made, from the account established pursuant to paragraph (3) of section 10 of this chapter.

(c) If the commissioner determines that an individual obligee or obligor has incurred bank or similar fees as a direct result of administrative error by the IV-D agency, the IV-D agency may, at the discretion of the commissioner, reimburse such obligee or obligor for such fees from the account established pursuant to paragraph (3) of section 10 of this chapter.

SECTION 58. Chapter 175 of the General Laws, as so appearing, is hereby amended by adding a new section 24F thereto, as follows:-

Section 24F. Withholding of Past-Due Taxes From Insurance Benefit Payment.

(a) Subject to the requirements of section 24D hereof which shall take precedence over this section, prior to making any nonrecurring payment equal to or in excess of \$500 to a claimant

under a contract of insurance, every company authorized to issue policies of insurance pursuant to this chapter shall exchange information with the department of revenue to ascertain whether such claimant owes taxes to the commonwealth. To determine whether a claimant owes taxes to the commonwealth, the company shall either provide the department of revenue with information about the claimant or examine information made available by the department of revenue and updated not more than once a month. If the company elects to provide the department of revenue with information about a claimant, the company shall provide to the department of revenue, not less than ten business days prior to making payment to such claimant, the claimant's name, address, date of birth and social security number as appearing in the company's files and such other information appearing in the company's files as the commissioner of revenue may require by regulation in consultation with the commissioner of insurance. The company shall use a method and format prescribed by the commissioner of revenue but if the company is unable to use a method and format prescribed by said commissioner of revenue, such company shall cooperate with the department of revenue to identify another method or format, including submission of written materials. If the company elects to examine information made available by the department of revenue and such claimant owes past taxes, the company shall notify the department of revenue, not less than ten business days prior to making payment to such claimant, of the claimant's name, address, date of birth and social security number as appearing in the company's files and such other information appearing in the company's files as the commissioner of revenue may require by regulation in consultation with the commissioner of insurance, using a method and format prescribed by the commissioner of revenue. The company may remit to the department of revenue the full amount of taxes owed to the commonwealth at the time that it so

notifies the department of revenue or at any time prior to making payment to the claimant, without regard to the ten business day period.

For purposes of this section, the word "claimant" shall mean (i) anyone filing a claim under an insurance policy, or (ii) a beneficiary under a life or annuity policy; and a person shall not be deemed to owe taxes to the commonwealth if the person has filed in good faith an application for abatement of such tax or a petition before the appellate tax board contesting such tax and the application or petition, or an appeal from an adverse decision of the appellate tax board, is still pending, or if the statute of limitations for filing an application for abatement, petition or appeal has not yet expired.

(b) This section shall not apply to that portion of a claim resulting in payments on behalf of the claimant issued to a third party where there is documentation showing that the third party has provided or agreed to provide the claimant with a benefit or service related to the claim including, but not limited to, the services of an attorney or a medical doctor, or to any portion of a claim based on damage to or a loss of real property. The commissioner of revenue, in consultation with the commissioner of insurance, shall promulgate regulations setting forth procedures for making payment to the department of revenue when a third party has either provided or agreed to provide goods or services to the claimant, and the insurance company cannot reasonably determine the remaining amount payable to the claimant.

(c) The provisions of the Employee Retirement Income Security Act limiting, for contracts of insurance, the amounts which may be assigned or attached in order to satisfy child support obligations shall apply to the provisions of this section.

(d) Pursuant to regulations issued by the commissioner of revenue in consultation with the commissioner of insurance, a company that knowingly fails to accurately exchange

information regarding a claim to which this section applies shall be subject to a penalty assessed by the department of revenue. A company that makes a payment to the department of revenue pursuant to this section and an insured individual on whose behalf the company makes a payment shall be immune from any obligation or liability to the claimant or other interested party arising from the payment, notwithstanding the provisions of this chapter or any other law.

(e) Information provided by the department of revenue to a company under this section may only be used for the purpose of assisting the department of revenue in collecting taxes owed to the commonwealth. Any individual or company who uses such information for any other purpose shall be liable in a civil action to the department of revenue in the amount of \$1,000 for each violation.

(f) A person making a claim governed by this section shall provide his current address, date of birth and social security number to the insurance company, upon the request of the company. Such company may inform the claimant that such request is being made in accordance with this section for the purpose of assisting the department of revenue in collecting taxes owed to the commonwealth. Any such individual or business entity who refuses to provide the information required by this section shall not receive payment on the claim, and the company that declines payment on this basis shall be exempt from suit and immune from liability under this chapter or any other chapter or in any common law action in law or equity.

(g) In the event of a state of emergency declared by the governor or the president of the United States, the commissioner of insurance may temporarily suspend the application of this section to claims made due to the conditions resulting in such state of emergency.

SECTION 59. In the event that one or more states characterize as subject to apportionment income that the commissioner considers to be allocable in full to the

commonwealth under this act, the commissioner shall use his best efforts in consultation with such state or states to avoid subjecting such income to multiple taxation.

SECTION 60. The commissioner of revenue shall publish such rulings and regulations as may be necessary or helpful to the implementation of this act.

SECTION 61. Section 7 shall take effect upon passage and shall apply to all returns and other related documents on file with the commissioner on the date of passage of this section.

SECTION 62. Section 11 shall be effective for taxable years beginning on or after January 1, 2004.

SECTION 63. Section 19 shall apply to any payments received by the commissioner of revenue on or after January 1, 2005.

SECTION 64. Section 42 shall be effective on January 1, 2005.

SECTION 65. Section 49 shall be effective for purchases made on or after January 1, 2004.

SECTION 66. Sections 21 and 25 shall be effective upon passage and shall be applicable to all existing liens of record not more than six years old as of the date of passage.

SECTION 67. Sections 22, 23, and 51 shall be in effect for all tax and child support liens filed or recorded on or after July 1, 2005. All existing provisions of the General Laws in any way affecting the recording, perfection, priority and expiration of (i) state tax liens in favor of the commonwealth by the department of revenue or (ii) child support liens in favor of the commonwealth by the child support enforcement division of the department, or any successors thereto, shall remain in full force and effect until July 1, 2005 if by that date (i) the commissioner of revenue shall have determined that the on-line electronic central lien registry system authorized hereunder is fully functional throughout the commonwealth and (ii) the commissioner

shall have issued a public notice that said system will be in operation as of that date. If the system is not functional and operational throughout the commonwealth as of July 1, 2005, then the pre-existing provisions of the aforesaid General Laws shall continue to remain in full force and effect until such date as the commissioner is able to make such determination and give such notice.

SECTION 68. Sections 16, 43, and 44 shall be effective for tax periods beginning on or after January 1, 2005.

SECTION 69. Sections 10, 12, 13, 14, 17, 18, 28, 35, 37, 38, 39, 40, 41, and 59 shall be effective for taxable years beginning on or after January 1, 2005.

SECTION 70. Except as otherwise specified, this act shall take effect upon passage.